

**Introduced by Senator Burton**  
**(Principal coauthor: Senator Vasconcellos)**  
**(Coauthors: Senators Scott and Sher)**  
(Coauthors: Assembly Members Hancock and Steinberg)

December 2, 2002

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An act to add Section 1376 to the Penal Code, relating to the death penalty.

LEGISLATIVE COUNSEL'S DIGEST

SB 3, as introduced, Burton. Death penalty: mental retardation.

Existing law, added by an initiative statute, provides that the penalty for a defendant who is found guilty of murder in the first degree, where special circumstances exist, is death or imprisonment in the state prison for life. In determining the penalty to be imposed, the trier of fact shall take into account whether, as a result of mental defect, the defendant had the capability to appreciate the criminality of his or her conduct or to conform that conduct to the requirements of the law, if this is relevant. A recent decision of the United States Supreme Court has held that the imposition of the death penalty on a mentally retarded person is prohibited by the Constitution.

This bill would define the term “mentally retarded” and would provide that a defendant in any case in which the prosecution seeks the death penalty may apply for an order directing that a mental retardation hearing be held. The bill would specify that the defendant shall present his or her evidence of mental retardation, and once this evidence is presented, the prosecution shall have the burden of proving beyond a reasonable doubt that the defendant is not mentally retarded. It would provide that the penalty for a mentally retarded defendant found guilty of murder in the first degree where special circumstances which would

otherwise make him or her eligible for imposition of the death penalty have been found, shall be confinement in the state prison for life without possibility of parole. This bill would also provide that if, after a mental retardation hearing, the court rules that the death penalty is not precluded, the defendant may request a special finding from the jury at a separate phase, following conviction, that the defendant is mentally retarded. It would specify that, if the defendant requests this special finding, the burden of proof shall be on the prosecution to prove beyond a reasonable doubt, and to a unanimous jury, that the defendant is not mentally retarded. The bill would provide that, if the jury determines that the defendant is not mentally retarded, the jury shall be informed in the penalty phase that evidence of low intellectual functioning or deficits in adaptive behavior may be considered as a mitigating factor in determining punishment. Because this bill would place additional duties on prosecutors, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1376 is added to the Penal Code, to read:  
2 1376. (a) As used in this section, ‘mentally retarded’ has the  
3 same meaning as provided in Section 1001.20.  
4 (b) In any case in which the prosecution seeks the death penalty,  
5 the defendant may, at a reasonable time prior to the  
6 commencement of trial, apply for an order directing that a mental  
7 retardation hearing be conducted. The court shall conduct a  
8 hearing without a jury to determine whether the defendant is  
9 mentally retarded. At the hearing, the defendant shall present his  
10 or her evidence of mental retardation. Once this evidence is  
11 presented by the defendant, the burden of proof shall be on the  
12 prosecution to prove beyond a reasonable doubt that the defendant  
13 is not mentally retarded. The defendant may present further  
14 evidence in response to the prosecution’s case. If the court finds



1 that the prosecution has failed to meet its burden of proof, it shall  
2 preclude the death penalty and trial thereafter shall be conducted  
3 as in any other case in which a sentence of death is not sought by  
4 the prosecution. If the defendant is found guilty of murder in the  
5 first degree, with a finding that one or more of the special  
6 circumstances enumerated in Section 190.2 are true, the trial court  
7 shall sentence the defendant to confinement in the state prison for  
8 life without the possibility of parole.

9 (c) If a defendant is subjected to an examination for purposes  
10 of this section, any statement made by the defendant during the  
11 examination shall be inadmissible in evidence against the  
12 defendant in any criminal action or proceeding on any issue other  
13 than whether the defendant is mentally retarded.

14 (d) (1) A ruling by the court that the death penalty is not  
15 precluded under this section shall not restrict the defendant's  
16 opportunity to introduce evidence of mental retardation during  
17 trial or to argue that the evidence should be given mitigating  
18 significance. If the trial is conducted before a jury, the jury shall  
19 not be informed of any ruling denying a defendant's motion under  
20 this section.

21 (2) If the court determines that the death penalty is not  
22 precluded under this section, the defendant may request a special  
23 finding from the jury, at a separate phase, following a conviction  
24 of murder in the first degree with a finding that one or more of the  
25 special circumstances enumerated in Section 190.2 are true, on the  
26 question of whether the defendant is mentally retarded as defined  
27 by this section. If the defendant requests this special finding, the  
28 burden of proof shall be on the prosecution to prove beyond a  
29 reasonable doubt, and to a unanimous jury, that the defendant is not  
30 mentally retarded. If the jury determines that the defendant is  
31 mentally retarded, the court shall sentence the defendant to  
32 confinement in the state prison for life without the possibility of  
33 parole. If the jury finds that the defendant is not mentally retarded,  
34 there shall be further proceedings on the question of penalty.

35 (3) If the matter proceeds to a penalty phase, the jury shall be  
36 informed that evidence of low intellectual functioning or deficits  
37 in adaptive behavior may be considered as a mitigating factor even  
38 though the jurors previously determined that the defendant is not  
39 mentally retarded as defined by this section.

1 SEC. 2. No reimbursement is required by this act pursuant to  
2 Section 6 of Article XIII B of the California Constitution because  
3 the only costs that may be incurred by a local agency or school  
4 district will be incurred because this act creates a new crime or  
5 infraction, eliminates a crime or infraction, or changes the penalty  
6 for a crime or infraction, within the meaning of Section 17556 of  
7 the Government Code, or changes the definition of a crime within  
8 the meaning of Section 6 of Article XIII B of the California  
9 Constitution.

